



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

February 25, 2004

H.R. 2671 **Clear Law Enforcement for Criminal Alien Removal Act of 2003**

As introduced on July 9, 2003

SUMMARY

H.R. 2671 would authorize state and local law enforcement agencies to investigate and detain aliens while enforcing federal immigration laws. The bill would authorize the appropriation of nearly \$13 billion over the 2005-2009 period, mostly for grants to state and local governments to cover the costs of enforcing immigration laws relating to illegal aliens. Assuming appropriation of the necessary amounts, CBO estimates that implementing H.R. 2671 would cost about \$9 billion over the 2005-2009 period.

H.R. 2671 also would establish new criminal and civil penalties for the unlawful presence of persons in the United States. The bill could thus affect receipts as well as direct spending, but CBO estimates that any such effects would not be significant.

H.R. 2671 contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) because it would preempt state and local laws. CBO estimates that the cost for state and local governments to comply with the mandates would be significantly below the threshold established in UMRA (\$60 million for 2004, adjusted annually for inflation). The bill also would add three new requirements for states that are participating in federal programs that reimburse their costs for detaining certain illegal aliens.

H.R. 2671 contains no private-sector mandates as defined in UMRA.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 2671 is shown in the following table. The cost of this legislation falls within budget function 750 (administration of justice).

	By Fiscal Year, in Millions of Dollars					
	2004	2005	2006	2007	2008	2009
SPENDING SUBJECT TO APPROPRIATION^a						
Spending Under Current Law for Immigration Programs Funded by H.R. 2671						
Budget Authority ^b	1,415	0	0	0	0	0
Estimated Outlays	1,509	581	279	76	39	0
Proposed Changes:						
Grants to State and Local Police Agencies to Detain and Hold Illegal Aliens						
Authorization Level	0	1,000	1,000	1,000	1,000	1,000
Estimated Outlays	0	220	520	720	870	1,000
Institutional Removal Program						
Authorization Level	0	20	30	40	50	60
Estimated Outlays	0	17	29	39	49	59
State Criminal Alien Assistance Program						
Authorization Level	0	1,000	1,000	1,000	1,000	1,000
Estimated Outlays	0	220	520	720	870	1,000
Detention and Removal of Illegal Aliens						
Authorization Level	0	500	500	500	500	500
Estimated Outlays	0	400	450	500	500	500
Other Programs to Enforce Immigration Laws						
Estimated Authorization Level	0	19	14	15	15	15
Estimated Outlays	0	16	15	15	15	15
Total Changes						
Estimated Authorization Level	0	2,539	2,544	2,555	2,565	2,575
Estimated Outlays	0	873	1,534	1,994	2,304	2,574
Spending Under H.R. 2671						
Estimated Authorization Level	1,415	2,539	2,544	2,555	2,565	2,575
Estimated Outlays	1,509	1,454	1,813	2,070	2,343	2,574

a. In addition to the amounts shown above, enacting H.R. 2671 also could affect revenues and direct spending, but CBO estimates that any such effects would not be significant in any year.

b. The 2004 level is the amount appropriated for that year for the Institutional Removal Program, the State Criminal Alien Assistance Program, and federal programs for the detention and removal of aliens.

BASIS OF ESTIMATE

For this estimate, CBO assumes that the bill will be enacted by the end of fiscal year 2004. CBO estimates that implementing H.R. 2671 would cost about \$9 billion over the 2005-2009 period, assuming appropriation of the necessary funds. We also estimate that enacting the bill could increase both direct spending and receipts, but any such effects would not be significant in any year.

Section 108 would establish a procedure for states and localities to file claims against the federal government for failure to cooperate in enforcing immigration laws. Under the bill, states and localities could pursue administrative litigation, appealable only to the Attorney General or the Secretary of the Department of Homeland Security (DHS), to obtain fines of \$1,000 per incident or \$10,000 in cases of a pattern or practice of failing to cooperate with state and local governments. No costs for resolving such claims are included in this estimate because CBO does not expect that states and local governments would find it cost-effective to pursue such litigation.

Spending Subject to Appropriation

For this estimate, CBO assumes that the amounts authorized by the bill for the immigration programs listed below will be appropriated by the start of each fiscal year and that spending will follow the historical spending patterns for these or similar activities.

H.R. 2671 would authorize the appropriation of:

- \$1 billion for each fiscal year for grants to state and local governments for equipment and facilities needed to detain and house illegal aliens;
- \$20 million for fiscal year 2005, \$30 million for 2006, \$40 million for 2007, \$50 million for 2008, and \$60 million for 2009 for the Institutional Removal Program, that identifies certain criminal aliens in federal and state correctional facilities and removes them from the United States after they have completed their sentences;
- \$1 billion for each fiscal year for the State Criminal Alien Assistance Program (SCAAP) administered by the Department of Justice, which provides grants to state and local governments to cover certain costs of detaining and holding illegal aliens that have committed other crimes; and
- \$500 million for each fiscal year for the detention and removal of aliens not lawfully present in the United States.

In addition, H.R. 2671 contains several other provisions that would authorize additional funds, including federal training for state and local law enforcement personnel on the operation of federal immigration laws and the expansion of federal crime databases to include violators of immigration laws. Based on the costs of similar programs in the Department of Homeland Security and the Department of Justice, CBO estimates that the cost of implementing these provisions would be about \$80 million over the 2005-2009 period.

Direct Spending and Receipts

H.R. 2671 would establish new civil and criminal penalties for the unlawful presence of persons in the United States. Thus, the federal government might collect additional fines if the bill is enacted. Collections of civil fines are recorded as revenues and deposited in the Treasury. Collections of criminal fines are deposited in the Crime Victims Fund and later spent. CBO expects that any additional receipts and direct spending would not be significant because most of the offenders probably would not be able to pay the fines.

In addition, H.R. 2671 would require DHS to deposit one-third of the receipts from immigrant and nonimmigrant visa fees and adjustment of status fees into a new account entitled “State and Local Immigration Law Enforcement Fee Account.” Currently, these fees amount to about \$1.2 billion a year and are used by DHS to defray the costs of providing immigration adjudication services. H.R. 2671 would direct DHS to increase fees by an amount sufficient to pay the full costs of providing immigration adjudication services, a portion of the costs of federal enforcement of immigration violations, and compensation to states for their costs to detain and hold illegal aliens.

For fiscal year 2005, CBO estimates that one-third of the receipts from immigrant and nonimmigrant visa fees and adjustment of status fees would amount to about \$0.4 billion. Because considerable uncertainty surrounds the number of illegal aliens in the United States and the extent to which states and localities would choose to enforce immigration laws under H.R. 2671, it is difficult to estimate how much DHS would need to collect in fees to compensate states. (For fiscal year 2003, states requested a total of \$660 million for SCAAP for reimbursement of certain costs of detaining criminal aliens.) It is possible that DHS would have to raise another \$1 billion or more to compensate states for their costs to detain and hold illegal aliens. CBO assumes that DHS would raise visa fees as necessary in 2005 to offset these additional costs even though such increases could more than double the current fees charged to provide immigration adjudication services. Thus, H.R. 2671 would have no significant net effect on DHS spending for these activities.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

H.R. 2671 contains two intergovernmental mandates as defined in UMRA. First, it would authorize state and local law enforcement officials, notwithstanding any other provision of law, to investigate, apprehend, detain, or remove aliens while enforcing civil and criminal immigration laws. This broad authority for state and local law enforcement officials would preempt the authority of state and local governments to regulate those officers. Under current law, states may enter into voluntary agreements with the Department of Justice to have their officers trained to enforce immigration laws. To date, two states—Florida and Alabama—have entered into those agreements. Some other state and local governments independently authorize their law enforcement officials to enforce certain criminal immigration violations, but at least two states and 30 local jurisdictions specifically restrict their officers from enforcing certain federal immigration laws.

Second, this bill would preempt certain state and local liability laws by ensuring immunity for individual law enforcement officers and state and local agencies from lawsuits relating to their enforcement of immigration laws. CBO estimates that the direct cost for state and local governments to comply with those preemptions would be significantly below the threshold established in UMRA (\$60 million for 2004, adjusted annually for inflation).

The bill also would add three new requirements for states that receive reimbursements for detaining certain illegal aliens. It would require states and localities to pass legislation authorizing their officers to enforce immigration laws. It also would require state and local governments to have a policy that law enforcement officials report detailed information on immigration violators to the Departments of Justice and Homeland Security. That information would include name, address, physical description of the violator; the date, time, and location of the encounter and the reason for the stop; the driver's license number and issue state; the license plate and make and model of automobile; and a photo and fingerprints, if available. State and local officials would be required to transmit this information within 10 days of the encounter. Finally, the bill would require state and local governments to cooperate with federal authorities by providing information on illegal criminal aliens in state and local prison systems. Any jurisdiction that fails to implement these changes would be ineligible to receive SCAAP and other federal grants for detaining certain illegal aliens.

The bill would authorize the appropriation of \$1 billion annually each fiscal year for SCAAP and \$1 billion annually each fiscal year for technology improvements and other administrative costs incurred by state and local governments as a result of this bill's enactment. In recent years, the amount appropriated for the SCAAP program and the total reimbursements received by state and local governments have been less than the actual cost to detain illegal criminal aliens. According to the Bureau of Justice Assistance, every state and more than 750 local governments applied for reimbursements totaling more than

\$650 million in fiscal year 2003. Actual reimbursements totaled \$240 million (about 35 percent of those costs).

In addition to the grant programs, the bill would authorize DHS to deposit one-third of the fees collected for visa processing into a fund for state and local enforcement to cover expenses of detaining illegal aliens. Assuming the amounts authorized for the grant programs are appropriated and visa fees are increased to cover the full costs of detaining illegal aliens, state and local governments should be able to cover the additional costs associated with these requirements.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

H.R. 2671 contains no private-sector mandates as defined in UMRA.

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